



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Department
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Chair

JOHN CHIANG
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MICHAEL C. GENEST
Member

January 2006, Franchise Tax Board Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.html>.

The Litigation Rosters for the last twelve months may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – January 2006

Case Name

Court Number

Milhous, Paul B. & Mary A.

San Diego Superior Court No. GIC773382

Milhous, Robert & Gail P.

San Diego Superior Court No. GIC773381

FRANCHISE AND INCOME TAX
New Cases – January 2006

Case Name

Court Number

Playmates Toys, Inc.

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

January 2006

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334
Court of Appeal, 2nd Appellate Dist. Div P No. B178750

Filed - 05/23/03

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell
O'Melveny & Myers, LLP

FTB's Counsel

Brian Wesley

- Issues:
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

Years: 1992 and 1993

Amount \$4,912,037.26

Status: **Remittitur filed on January 30, 2006.**

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334772

Filed – 06/10/05

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

FTB's Counsel

Donald R. Currier
Joseph M. O'Heron

Sherrill Johnson
Offices of the General Counsel City National Bank

- Issues:
1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
 2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
 3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003

Amount \$84,676,129.00

Status: **Demurrer Sustained Without Leave to Amend filed on January 13, 2006.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 02/07/03

FTB's Counsel

Steven J. Green

- Issues:**
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
 2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years: 1974-1982, 1984-1987, 1989-1991

Amount \$2,912,696.00

Status: Order to Stay Proceeding signed by Judge Virga on November 29, 2004, until a decision is reached in the *General Motors v. FTB* case.

CRISA CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC345087

Taxpayer's Counsel

Steven Toscher, Michel R. Stein

Hochman Salkin, Rettig, Toscher & Perez, P.C.

Filed - 12/23/05

FTB's Counsel

Donald Currier

- Issue:**
1. Whether the plaintiffs' California income can be determined upon the basis of a combined report including its foreign parent.
 2. Whether the amount of income allocated and apportioned to California was properly determined.
 3. Whether regulation 25106.5-10 was properly applied to account for inflation experienced by the parent's company.
 4. Whether the denial of the use of alternative allocation and applicant methods under section 25137 was an abuse of discretion.

Years: 1987 through 1989

Amount \$622,800.00

Status: Answer to Complaint filed on January 25, 2006.

DILTS, WALTER B. JR. AND PHYLLIS A. KAPPELER v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC04436496

Taxpayer's Counsel

R. Todd Luoma

Law Office of Richard Todd Luoma

Filed - 11/19/04

FTB's Counsel

Anne Michelle Burr

Issue: Whether Plaintiffs ceased to be California residents as of December 16, 1994.

Years: 1994 & 1995

Amount \$973,101.00

Status: Discovery proceeding. Trial rescheduled to May 8, 2006.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

Joanne Garvey, & Teresa Maloney

Heller, Ehrman, White & McAuliffe

FTB's Counsel

Benjamin F. Miller

Issue: Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years: 1980 through 1985

Amount \$1,137,006.98

Status: **Unpublished Opinion in favor of FTB filed on January 11, 2006. Plaintiffs/Appellants' Petition for Rehearing filed on January 28, 2006.**

GALASKI, GREGORY JOHN v. Franchise Tax Board

San Diego Superior Court Docket No. IC833950

Filed – 08/09/04

Taxpayer's Counsel

Gregory Galaski, In Pro Per

FTB's Counsel

Gregory S. Price

Issues: 1. Whether Plaintiff filed claims for refund for each of the years.
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years: 1999 through 2003

Amount \$13,092.37

Status: Plaintiff's Motion for Reconsideration of Order Denying Motion to Vacate or for New Trial taken off calendar filed December 9, 2005.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-439929

Filed – 03/29/05

Taxpayer's Counsel

Thomas H. Steele

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

FTB's Counsel

Marguerite Stricklin

Issues: 1. Whether the taxpayer's payroll factor was properly computed by excluding foreign employee stock options.
2. Whether the taxpayer's sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
3. Whether federal RAR adjustments were properly taken into account.

Years: 1992-1997

Amount \$3,550,367.00

Status: Discovery proceeding. Mandatory Settlement Conference scheduled for May 26, 2006. Trial is scheduled for June 12, 2006.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404
Court of Appeal, 2nd Appellate District No. B165665
California Supreme Court No. S127086

Filed - 03/06/02

Taxpayer's Counsel

Charles R. Ajalat
Law Office of Ajalat, Polley & Ayooob

FTB's Counsel

Stephen Lew
Donald Currier
Joseph O'Heron

- Issues:
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years: 1986 through 1988 Amount \$10,692,755.00

Status: Defendant/Respondent FTB's Letter to California Supreme Court re: the Arizona Supreme Court's denial of review of the *Walgreen Arizona Drug Co. v. Arizona Dept of Revenue* (Ariz. Ct. App. 2004) 97 P.3d 896 decision filed on behalf of the Franchise Tax Board on July 1, 2005.

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968
Court of Appeal, 2nd Appellate District No. B187278

Filed - 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.
Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue: Whether Plaintiffs were entitled to a business bad debt reduction.

Years: 1990 & 1993 Amount \$65,738.00

Status: Plaintiffs/Appellants' Notice of Appeal filed on November 20, 2005.

HEPNER, GERSHON v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334679

Taxpayer's Counsel

Dennis N. Brager, Kneaver Riggall

Law Offices of Dennis N. Brager

Filed – 06/08/05

FTB's Counsel

Herbert A. Levin

- Issue:
1. Whether the taxpayer filed a valid claim for refund when there is an unpaid balance on the account.
 2. If the taxpayer filed a valid claim for refund, is the amount refundable limited to the amount paid within one year of the date of the claim?
 3. Whether the notice of proposed assessment was timely issued.
 4. Whether the penalty for fraud was properly imposed.

Years: 1987

Amount \$22,065.00 Tax
 \$23,902.00 Penalty

Status: Trial rescheduled to March 15, 2006.**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen, H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw

McDonald, Carano,

Wilson LLP

Las Vegas, Nevada

- Issues:
1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
 2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
 3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992

Amount \$7,545,492.00 Tax
 \$5,659,119.00 Penalty

Status: Clark County District Court:
Discovery proceeding.

IDLEMAN, HURBERT AND JOANN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BS093240

Taxpayer's Counsel

Warren Nemiroff, Esq.

Filed – 10/21/04

FTB's Counsel

Marla K. Markman

Issue: Whether or not the taxpayers are entitled to a refund as a result of federal adjustments to a SubChapter S corporation.

Year: 1995

Amount \$86,458.00

Status: Court Trial held on January 9, 2006. Stipulation and Order for Refund of Income Taxes and Dismissal of Action and Order Thereon filed by the Court on January 9, 2006.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Filed – 07/09/03

Court of Appeal 2nd Appellate District Court No. B175952

Taxpayer's Counsel

Derek L. Tabone, Esq.

Law Offices of Tabone, APC

FTB's Counsel

Brian Wesley

Elisa Wolfe-Donato

Issue: Whether Plaintiffs have taxable income for the years involved.

Years: 1999-2001

Amount \$208,742.00

Status: Oral Argument held on January 25, 2006.

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel

Edwin P. Antolin

Silverstein & Pomerantz, Jordan M. Goodman

Brian L. Browdy, Horwood, Marcus & Berk

FTB's Counsel

George C. Spanos

Issues: 1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year: 1987

Amount \$133,042.00

Status: Appellant/Petitioner's Petition for Review to California Supreme Court denied on January 4, 2006. Remittitur issued on January 12, 2006.

KIM, PAUL M. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC333465

Filed – 05/13/05

Taxpayer's Counsel

Yoon Han Kim

Law Offices of Yoon Han Kim & Assoc.

FTB's Counsel

Donald R. Currier

Issue: 1. Whether taxpayer had income from payments received as the result of a lawsuit.
2. Whether taxpayer had a loss arising from foreclosure of property.
3. Whether the taxpayer filed a claim for refund.

Years: 1993

Amount \$16,098.46

Status: Trial date set for April 26, 2006. Post-Mediation Status Conference completed on January 11, 2006.

KUHN, DAVID & ELIZABETH v. Franchise Tax Board

Alameda Superior Court Docket No. WG05212795

Taxpayer's Counsel

David N. Kuhn

Attorney at Law

Filed – 05/13/05

FTB's Counsel

David Lew

Issue: 1. Whether Plaintiffs timely filed claims for refund.
2. Whether estoppel should lie against the Board for failing to notify Plaintiffs of the statute of limitations.

Years: 1994 through 1996Amount \$18,090.48Status: Case Management Conference continued to March 21, 2006.**LAVINE, ELIZABETH v. Franchise Tax Board**

Sacramento Superior Court Docket No. 04AS03347

Taxpayer's Counsel

Elizabeth Lavine, In Pro Per

Filed - 09/07/04

FTB's Counsel

Amy J. Winn

Issues: 1. Whether the suit for refund was filed timely.
2. Whether Plaintiff was a resident of California in 1999.

Year: 1999Amount \$4,579.91Status: **Mandatory Settlement Conference held on January 19, 2006.****THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board**

Alameda Superior Court Docket No. 837723-0

Court of Appeal, 1st Appellate District Court No. A102915

California Supreme Court No. S136922

Taxpayer's Counsel

Edwin P. Antolin

Morrison & Foerster, LLP

Filed - 04/09/01

FTB's Counsel

Joyce Hee

Issues: 1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years: 1993 and 1994Amount \$2,185,718.00

Status: Petition for Review granted on October 26, 2005. Further action in this matter is deferred pending consideration and disposition of a related issued in General Motors and Microsoft or pending further order of the court.

MARKEN, DONALD W. & CLAUDINE H. v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Court of Appeal, 1st Appellate Dis. No. A109715Court of Appeal, 1st Appellate District No. A110668 (Attorneys' Fees)*Taxpayer's Counsel*

William E. Taggart, Jr.

Taggart & Hawkins

FTB's Counsel

Marguerite Stricklin

Issue: Whether plaintiffs were residents of California in 1993.

Year: 1993

Amount \$244,012.00

Status: **Record on Appeal filed by the Trial Court to the Appellate Court on January 4, 2006.**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Court of Appeal, 1st Appellate Dist. Div. One No. A109907*Taxpayer's Counsel*

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang

Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

Issues: 1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years: 1993 and 1994

Amount \$606,744.00

Status: **Order filed on January 19, 2006; Plaintiff/Appellant's Request to continue Oral Argument granted, date to be decided.**

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Filed - 10/19/01

Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

California Supreme Court No. S133343

Taxpayer's Counsel

James P. Kleier, Esq.

Reed Smith LLP

FTB's Counsel

Julian O. Standen

Joseph Patton Powers

Baker & McKenzie

Issues: 1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.

3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year: 1991 Amount \$1,879,809.00

Status: **General Motors Corporation's Amicus Curiae Brief in Support of Plaintiff/Respondent Microsoft filed on January 13, 2006. Multistate Tax Commission's Amicus Curiae Brief in Support of Defendant/Appellant FTB filed by mail on January 13, 2006.**

MONTGOMERY WARD LLC v. Franchise Tax Board v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed - 12/30/02

Taxpayer's Counsel

FTB's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein

Gregory Price

Silverstein & Pomerantz, LLP

- Issues:
1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
 2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years: 1989 through 1994 Amount \$2,694,192.00

Status: Status Conference continued to March 17, 2006.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed - 10/10/03

Taxpayer's Counsel

FTB's Counsel

Spencer T. Malysiak

Michael Cornez

Spencer T. Malysiak Law Corp.

- Issues:
1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
 2. Whether a declaratory relief action can be brought to prevent the collection of tax.
 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
 4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years: 1996 and 1997 Amount \$90,773.05

Status: Trial Setting Conference continued to March 20, 2006.

NISSAN NORTH AMERICA, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334313

Filed – 06/01/05

Taxpayer's Counsel

FTB's Counsel

Richard J. Ayooob

Stephen Lew

Ajalat, Polley & Ayooob

Lisa Chao

- Issues: 1. Whether income from various sources was properly classified as business income.
2. Whether the Franchise Tax Board properly calculated income, expenses and the apportionment factors.
3. Whether the Franchise Tax Board erroneously disallowed credits to which Plaintiff was entitled.
4. Whether proposed assessments were properly made within the statute of limitation.

Years: 1990 & 1991 Amount \$3,250,949.00

Status: **Discovery proceeding.** Finals Status Conference scheduled for April 6, 2006. Trial scheduled for April 11, 2006.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-437721

Filed – 01/15/05

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97-12/31/01 Amount \$25,067.00 Tax
\$ 3,764.29 Penalty

Status: **Defendant's Reply Brief filed on January 13, 2006. Plaintiff's Reply Trial Brief filed on January 14, 2006. Short Cause Trial held on January 23, 2006; argument presented, matter taken under submission on February 17, 2006.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386

Filed - 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

California Supreme Court No. S127649

Taxpayer's Counsel

FTB's Counsel

Clayton Vreeland
Bingham McCutchen LLP

Amy J. Winn

Issue: Whether the tax involved was timely assessed.

Year: 1983 Amount \$12,350.00

Status: **Plaintiffs/Respondents' Supplemental Brief filed on January 20, 2006.**

PLAYMATES TOYS, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC344785

Filed – 12/19/05

Taxpayer's Counsel

FTB's Counsel

Craig J. Stein
Gelfand, Stein & Wasson, LLP

Joseph M. O'Heron

Issue: Whether Defendant Franchise Tax Board properly computed the numerator of the taxpayer's California sales factor by assigning sales made from Hong Kong to California.

Years: 1988-1990

Amount \$1,582,288.00

Status: Summons and Complaint served on the Franchise Tax Board on January 20, 2006.

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

Court of Appeal, 2nd Appellate Dist. No.B186947

Taxpayer's Counsel

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

FTB's Counsel

Anthony F. Sgherzi

Issue: Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year: 1992

Amount \$45,415.00 Tax

Status: Plaintiffs/Appellants' Supplemental Brief filed on January 25, 2006.

SQUARE D COMPANY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05442465

Filed – 06/21/05

Taxpayer's Counsel

Allan L. Schare, Kimberly M. Reeder

McDermott Will & Emery LLP

Palo Alto, Ca.

FTB's Counsel

Paul Gifford

Richard A. Hanson

McDermott Will & Emery LLP

Chicago, IL

Issue:

1. Whether Palatine Hills Leasing, which invested in leverage lease transactions, was part of the unitary business conducted by Square D Company.
2. Whether the income of Palatine Hills Leasing constituted business income of the unitary business conducted by Square D Company.
3. How the proceeds from the short-term investment of funds should be reflected in the sales factor of the apportionment formula.

Years: 1985 through 1990

Amount \$5,635,087.40

Status: Discovery proceeding. Mandatory Settlement Conference scheduled for April 26, 2006. Trial scheduled for May 15, 2006.

**STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and
State Board of Equalization**

Sacramento Superior Court Docket No.04AS03598

Taxpayer's Counsel

Mark A. Staples, In Pro Per

Filed – 09/03/04

FTB's Counsel

Michael J. Cornez

Issues: 1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.
2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.

Year: 1998 Amount \$1,141.00

Status: Defendant's Motion for Summary Judgment to be filed February 7, 2006. Settlement Conference scheduled for March 27, 2006. Trial scheduled for April 11, 2006.

TOY'S "R" US, INC. & AFFILIATES v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel

Eric J. Coffill

Carley A. Roberts

Morrison & Foerster, LLP

Filed - 07/17/01

FTB's Counsel

Michael J. Cornez

Issue: Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years: 1991 through 1994 Amount \$5,342,122.00

Status: **Oral Argument scheduled for February 28, 2006.**

UNION BANK OF CALIFORNIA v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 05441957

Taxpayer's Counsel

James P. Kleier, Brian Toman, John R. Messenger

Reed Smith, LLP

Filed – 06/06/05

FTB's Counsel

Anne Michelle Burr

Issue: 1. Whether additions to the bad debt reserves of the taxpayer's unitary business were properly calculated.
2. Whether there were losses arising from the exchange of loans for bonds that are deductible as ordinary losses.
3. Whether the water's-edge election fee assessed violated the Commerce Clause of the United State Constitution.

Years: 1991 Amount \$15,953,167.00

Status: Mandatory Settlement Conference scheduled for October 26, 2006. Trial scheduled for November 13, 2006.

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. 05-440001

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed – 04/01/05

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003

Amount \$29,580.00

Status: Short Cause Trial scheduled for March 6, 2006.

VERTULLO, JOHN & BARBARA v. Franchise Tax Board

San Diego Superior Court Docket No. GIC848577

Taxpayer's Counsel

Denis W. Retoske, Esq.

Filed – 06/07/05

FTB's Counsel

Leslie Branman Smith

Issue:

1. Whether Plaintiffs are entitled to a deduction with respect to funds allegedly embezzled by a business associate during the years at issue.
2. Whether Notices of Proposed Assessment mailed with an incorrect zip code were adequate.
3. Whether Plaintiffs failure to raise the address issue in their appeal of a denial of a Claim for Refund to the Board of Equalization limits their use of that ground in a suit for refund after denial of their appeal.

Years: 1975 & 1978

Amount \$56,155.95

Status: Defendant's Answer to Complaint filed on August 8, 2005.

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Court of Appeal, 2nd Appellate Dist. No. B178751

Taxpayer's Counsel

Dwayne M. Horii,

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

Issues:

1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years: 1986 and 1987

Amount \$1,741,534.00

Status: Plaintiff/Appellant's Reply Brief filed on January 9, 2006.